

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting Clerk and Recorder of the Board of Commissioners of Jefferson County, Montana (the "County"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "GRANTING PRELIMINARY APPROVAL TO THE PROPOSED ISSUANCE OF RECOVERY ZONE FACILITY REVENUE BONDS PAYABLE BY MONTANA TUNNELS MINING INC. IN AN AGGREGATE PRINCIPAL AMOUNT ESTIMATED NOT TO EXCEED \$50,000,000 UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1 AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009" (the "Resolution"), on file in the original records of the County in my legal custody; that the Resolution was duly adopted by the County Commissioners of the County at a regular meeting on July 6, 2010 and that the meeting was duly held by the County Board of Commissioners and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following County Commission members voted in favor thereof:

voted against the same:

abstained from voting thereon:

or were absent:

WITNESS my hand and seal officially this \_\_\_\_ day of July, 2010.

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Bonnie Ramey, Clerk and Recorder

## **RESOLUTION 15-2010**

### **JEFFERSON COUNTY, MONTANA**

#### **GRANTING PRELIMINARY APPROVAL TO THE PROPOSED ISSUANCE OF RECOVERY ZONE FACILITY REVENUE BONDS PAYABLE BY MONTANA TUNNELS MINING INC. IN AN AGGREGATE PRINCIPAL AMOUNT ESTIMATED NOT TO EXCEED \$50,000,000 UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1 AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

WHEREAS, pursuant to Section 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended (the "Code") including the provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), states and local governments, such as Jefferson County (the "County"), are authorized to issue recovery zone facility bonds to finance certain "recovery zone property" for use within designated "recovery zones," in amounts not in excess of certain volume caps allocated among states and counties and large municipalities within the states based on relative declines in employment in 2008;

WHEREAS, pursuant to Resolution No. 10-2010 heretofore adopted by the Board of Commissioners of the County (the "County Board") on April 27, 2010, the County Board designated the whole County, including the area in which the Project (as hereinafter defined) will be located, as a recovery zone (the "Recovery Zone") pursuant to ARRA;

WHEREAS, the designation of a Recovery Zone by the County enables the County to issue certain tax-exempt revenue bonds and designate them as Recovery Zone Facility Bonds, if certain other conditions are met;

WHEREAS, Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), authorizes the County to issue revenue bonds that are special, limited obligations of the County (including Recovery Zone Facility Bonds) for the purpose of defraying the cost of acquiring or improving any land, building, other improvement, and real or personal property considered necessary in connection with an improvement that is suitable for: commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing; hospitals; long-term care facilities; community-based facilities for individuals who are persons with developmental disabilities as defined in Montana Code Annotated Title 53, Chapter 20, Part 102, as amended; medical facilities; higher education facilities; electric energy generation facilities; family service provider facilities; the production of energy using an alternative renewable energy source as defined in Montana Code Annotated, Title 15, Chapter 6, Part 225, as amended; and any combination of these projects;

WHEREAS, the County has established procedures with regard to issuance of "Recovery Zone Facility Bonds" and on or before the date of this resolution, the County received the request of Montana Tunnels Mining Inc., a Montana corporation (the "Borrower"), requesting that the County issue one or more series of taxable or tax-exempt Recovery Zone Facility Bonds (the "Bonds") in order to, along with other available funds of the Borrower and certain grant funds to be received by the Borrower, (i) finance all or a part of the rehabilitation, installation, and equipping (including rolling stock) of the "M Pit" mine located at or about 270 Montana Tunnels Road, Jefferson City, Montana (the "Project") in the County; (ii) fund necessary reserves and interest during completion of the Project; and (iii) pay a portion of the costs of issuance for the Bonds;

WHEREAS, the intent of the Borrower is to utilize proceeds of the Bonds, along with other Borrower funds, in order to complete the Project so that the Borrower may mine and mill concentrated minerals from the “M Pit” mine;

WHEREAS, in order for the County to issue all or a portion of the Bonds as tax-exempt obligations, the County must first receive an allocation of bonding authority for Recovery Zone Facility bonds from the State of Montana with respect to the Bonds, the Borrower, and the Project;

WHEREAS, the Borrower has engaged Piper Jaffray & Co., Helena, Montana and Denver, Colorado (the “Underwriter”) to render investment banking services with respect to the Bonds and the Project and it is anticipated that the Underwriter will sell the Bonds when and if issued by the County; and

WHEREAS, the total cost of the Project is expected to be approximately \$58,500,000 and the amount of Bonds to be issued is estimated not to exceed \$50,000,000.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Jefferson County, Montana:

Section 1.        Notice of Public Hearing.

1.01.    Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), including the regulations promulgated thereunder, and the Act require that prior to the issuance of tax-exempt bonds, the County Board must hold a public hearing on the proposed Project and the issuance of the Bonds.

1.02.    Kennedy & Graven, Chartered, P.C., as bond counsel (“Bond Counsel”), with cooperation from County staff and the Borrower, has prepared a Notice of Public Hearing (the “Hearing Notice”) with respect to the Project and the issuance of the Bonds. The form of the Hearing Notice is attached to this resolution as Exhibit A. The Hearing Notice will be published in substantially the form attached as Exhibit A by Bond Counsel in the *Whitehall Ledger*, the *Boulder Monitor*, and the *Jefferson County Courier* once a week for three consecutive weeks in preparation for a public hearing to be held by the County Board on Tuesday, August 17, 2010, at 2:00 p.m. in the Courtroom of the Jefferson County Courthouse – 201 Centennial, in the City of Boulder, Montana. The date of the public hearing may be changed by County staff, in consultation with Bond Counsel and the Borrower, if it is more advantageous to hold the public hearing at a different date and/or time. All persons who appear at the public hearing will be given an opportunity to express their views with respect to the Project and the issuance of the Bonds. The County Board will consider the views of the public expressed at the public hearing, any written comments filed with the Clerk and Recorder and the information submitted by the Borrower prior to the decision by the County Board on whether to issue the Bonds.

Section 2.        Preliminary Approval Granted.

2.01.    The County has reviewed the application submitted by the Borrower and, based upon the information presented by the Borrower therein, determines that the application of the Borrower meets the criteria established by the County for the allocation of recovery zone facility bond issuance authority. The issuance of the Bonds, in an amount estimated not to exceed \$50,000,000, to finance the costs discussed herein is hereby preliminarily approved subject to the mutual agreement of the County, the Borrower and the Lender as to the details of the Bonds and provisions for its payment. The Bonds will be special, limited obligations of the County. The County will loan the proceeds derived from the Bonds to

the Borrower in order to finance the Project and the costs discussed herein. The debt service on the Bonds is payable solely from revenues and resources of the Borrower.

**In all events, it is understood, however, that the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County except the County's interest in the loan or revenue agreement with respect to the Bonds and the Project, and the Bonds, when, as, and if issued, shall recite in substance that the Bonds, including interest thereon, is payable solely from the revenues received from the Borrower and the Project, the property pledged to the payment thereof (including by a mortgage on the Project for the benefit of the bondholders or a credit enhancement provider) and other sources of security for the Bonds, and shall not constitute a pecuniary liability of, or a general or moral obligation of the County, within the meaning of any constitutional or statutory limitation. The full faith, credit and taxing power of the County are not pledged to the payment of the Bonds.**

The Bonds may be sold in a manner as may be agreed upon by the Borrower and the Underwriter. The Bonds may be payable at a time or times not exceeding 30 years from the date of issuance of the Bonds, at a price above or below par and at a place or places, bear interest at a rate or rates (fixed or variable), be evidenced in a manner, and be redeemable prior to maturity, with or without premium, as considered in the best interest of the County. The County is authorized to enter into agreements upon the terms that this County Board considers advantageous and not in conflict with the provisions of the Act.

2.02. Based upon information provided by the Borrower, this County Board hereby makes the following findings:

(a) The Project, as proposed, will be suitable as a commercial enterprise that will be a revenue producing facility and the County is authorized to issue revenue bonds (the debt service on which will be paid by the Borrower) to defray the costs of making a loan to the Borrower. The proceeds of the loan will be used to finance a portion of the Project and pay the costs and expenses related to the issuance and sale of the Bonds. The County will enter into a loan agreement with the Borrower requiring loan repayments from the Borrower in an amount sufficient to repay the loan when due and requiring the Borrower to pay all costs of maintaining and insuring the Project.

(b) The loan repayments made by the Borrower under the loan or revenue agreement shall be at all times sufficient to pay all principal of, premium, if any, and interest on the Bonds when due.

(c) The County's purpose in authorizing the issuance of the Bonds is to promote the public welfare of the County and its residents by redeveloping an underutilized mine which will improve employment opportunities in the County and further the purposes of the Act.

(d) The undertaking of the Project and the issuance of the Bonds to finance a portion of the costs of the Project are in the public interest.

2.03. The law firm of Kennedy & Graven, Chartered, P.C., is authorized to act as Bond Counsel and to assist in the preparation and review of necessary documents relating to the Project and Bonds issued in connection therewith. The Chairman of the County Board, the Commissioners and other officers, employees and agents of the County are hereby authorized to assist Bond Counsel in the preparation of such documents. The Chairman of the County Board, the Commissioners and other officers, employees and agents of the County are hereby authorized to assist the Borrower and the Underwriter with the preparation of documents relating to the offer and sale of the Bonds.

2.04. The Borrower has agreed to or will agree to pay directly or through the County any and all costs and expense incurred by the County in connection with the Project and the issuance of the Bonds.

2.05. All commitments of the County expressed herein are subject to the condition that by December 31, 2010, the County, the Borrower and the Lender will have agreed to mutually acceptable terms and conditions of the loan or revenue agreement, the Bonds and of the other instruments and proceedings relating to the Bonds and its issuance and sale. If the events set forth herein do not take place within the time set forth above, or any extension thereof, and the Bonds are not sold within such time, this Resolution will expire and be of no further effect.

2.06. The adoption of this Resolution does not constitute a guaranty or firm commitment that the County will issue the Bonds as requested by the Borrower. The County retains the right in its sole discretion to withdraw from participation and accordingly not to issue the Bonds, or issue the Bonds in an amount less than the amount referred to herein, should the County at any time prior to issuance thereof determine that it is in the best interest of the County not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to herein, or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for the transaction.

Section 3. Submission of an Application to the Montana Department of Administration for an Allocation of Recovery Zone Bonding Authority. Final approval for the issuance of the Bonds is conditioned, among other things, upon receipt of allocation of recovery zone bonding authority by the County from the Montana Department of Administration. Under ARRA, the Bonds must receive an allocation of the bonding authority from the State of Montana acting through the Department of Administration. An application for such an allocation must be made pursuant to the requirements set forth by the Department of Administration in its Recovery Zone Bond Allocation Policy. The County Board hereby authorizes the submission of an application for allocation of Recovery Zone Facility Bond authority in accordance with the requirements of the Department of Administration. County staff, the Chairman, other County officials, and Bond Counsel shall take all actions, in cooperation with the Borrower, as are necessary to submit an application for an allocation of Recovery Zone Facility Bonding authority to the Department of Administration.

Section 4. Miscellaneous.

4.01. The County intends to make expenditures for the Project and reimburse such expenditures from the proceeds of the Bonds. This resolution is intended to constitute a declaration of official intent, for purposes of Section 1.150-2 of the Treasury Regulations, with respect to certain original expenditures made from any sources other than the proceeds of the Bonds, in conjunction with the Project.

4.02. This Resolution shall be in full force and effect from and after its passage.

DATED this 6<sup>th</sup> day of July, 2010.

JEFFERSON COUNTY COMMISSION

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Tomas E. Lythgoe, Chairman

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Dave Kirsch, Commissioner

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Leonard Wortman, Commissioners

ATTEST:

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Bonnie Ramey, Clerk and Recorder

## EXHIBIT A

### JEFFERSON COUNTY, MONTANA

#### **NOTICE OF PUBLIC HEARING ON ISSUANCE OF RECOVERY ZONE FACILITY BONDS UNDER MONTANA CODE ANNOTATED TITLE 90, CHAPTER 5, PART 1, AS AMENDED AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 TO FINANCE A PROJECT FOR MONTANA TUNNELS MINING INC.**

NOTICE IS HEREBY GIVEN that the County Board (the "County Board") of the County of Jefferson, Montana (the "County") will hold a public hearing on Tuesday, August 17, 2010, at 2:00 p.m. in the Courtroom of the Jefferson County Courthouse – 201 Centennial, in the City of Boulder, Montana 59632, to consider the issuance of one or more recovery zone facility bonds (the "Bonds") under the federal American Recovery and Reinvestment Tax Act of 2009 (the "ARRA") and Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"). If issued, proceeds of the Bonds will be loaned by the County to Montana Tunnels Mining Inc., a Montana corporation (the "Borrower"), in order to along with other available funds of the Borrower and certain grant funds to be received by the Borrower, (i) finance all or a part of the rehabilitation, installation, and equipping (including rolling stock) to mine and mill concentrated minerals from the "M Pit" mine located at 270 Montana Tunnels Road, Jefferson City, Montana (the "Project"); (ii) fund necessary reserves and interest during construction of the Project; and (iii) pay a portion of the costs of issuance for the Bonds. Proceeds derived from the issuance and sale of the Bonds will be loaned from the County to the Borrower pursuant to a loan agreement to pay the costs of the Project and certain costs of issuing the Bonds. The total cost of the Project is expected to be approximately \$58,500,000 and the amount of Bonds to be issued shall not exceed \$50,000,000.

After the public hearing, the County Board will consider adoption of a resolution granting approval to the issuance of the Bonds. The aggregate face amount of Bonds proposed to be issued to finance the Project is presently estimated not to exceed \$50,000,000. **The Bonds will be issued by the County and will be special, limited obligations of the County, payable solely from the revenues pledged to the payment thereof, and will not be a pecuniary liability of or a general obligation of the County. The full faith, credit and taxing power of the Issuer are not pledged to the payment of the Bonds. The County, the State of Montana, or any political subdivisions thereof are not obligated in any manner for repayment of the Bonds.**

Anyone desiring to be heard during the public hearing will be afforded an opportunity to do so.

Persons desiring additional information may contact the County Clerk and Recorder, Bonnie Ramey, the Jefferson County Courthouse – 201 Centennial, in the City of Boulder, Montana 59632 or by calling (406) 225-4020. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the County Clerk and Recorder at P.O. Box H, Boulder, Montana 59632, prior to the date of the hearing set forth above.

Publication Dates: July 28<sup>th</sup>, August 4<sup>th</sup> and August 11<sup>th</sup>, 2010.